

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Evergreen Nursery,

Complainant,

v.

North San Diego County Transit District,

Defendant.

Case 05-10-008
(Filed January 22, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING
ON THE ISSUE OF COMMISSION JURISDICTION**

This complaint involves a request by Evergreen Nursery to preserve a private crossing of the tracks to be used by the North San Diego Country Transit District (Transit District) for its Sprinter service. Evergreen Nursery bases its request on Section 7537 of the Public Utilities Code, which states:

"The owner of any lands along or through which any railroad is constructed or maintained, may have such farm or private crossings over the railroad and railroad right of way as are reasonably necessary or convenient for ingress to or egress from such lands, or in order to connect such lands with other adjacent lands of the owner. The owner or operator of the railroad shall construct and at all times maintain such farm or private crossing in a good, safe, and passable condition. The commission shall have the authority to determine the necessity for any crossing and the place, manner, and conditions under which the crossing shall be constructed and maintained, and shall fix and assess the cost and expense thereof."

Evergreen Nursery maintains a commercial facility on its land located on both sides of the tracks and must cross the tracks in order to get to most of its nursery stock. The Transit District has been unable to reach an agreement with Evergreen Nursery on the construction of a private bridge over the tracks, and plans to close the grade-level crossing soon to allow its contractors to raise the tracks by approximately 8 feet and improve the tracks prior to commencement of the Sprinter commute service.

In its answer to the complaint, the Transit District argues that the Commission lacks jurisdiction to require a public transit district to allow for a private crossing. Because the question of jurisdiction is a threshold matter, I asked the parties to brief the issue. The Transit District provided me with a copy of its brief on Friday, February 17, 2006. Although the Transit District did not properly file its brief at that time and did not provide its electronic version in a manner that complies with the Commission's rules, I will allow for the document to be filed late. There is no harm in the late filing in this instance, since Evergreen Nursery, the only other party, received a timely copy of the brief. I remind the Transit District of its obligation to become familiar with and adhere to the Commission's Rules of Practice and Proceeding. Those rules are available in most law libraries and on the Commission's website at the following link: http://www.cpuc.ca.gov/PUBLISHED/RULES_PRAC_PROC/46095.htm. Evergreen Nursery filed its reply brief on Wednesday, February 22, 2006.

I directed the parties to brief this issue early in the proceeding because if the Transit District were to make a compelling case to support its position, I would have prepared a decision dismissing the case. However, the Transit District has not offered compelling support for its position.

Section 7537 is unambiguous on its face in that it applies to “any railroad.” No one has suggested that the Transit District’s Sprinter project is not a railroad as it is defined in Section 229. The Transit District argues that the Commission should interpret the code section to apply only to a railroad corporation, as defined in Section 230, which, the Transit District argues would not cover its project. Its major support for this interpretation of Section 7537 is that the section appears within a cluster of provisions under the heading “Railroad Corporations.” However, as Evergreen Nursery points out, Section 6 expressly states that “Division, part, chapter, article and section headings do not in any manner affect the scope, meaning, or intent of the provisions of this code.” The Legislature could not be clearer in stating its intent that the section headings are meaningless.

The Transit District cites *People v. Garfield* (1985), 40 Cal. 3d 192, pp.199-200, for the proposition that chapter headings may serve as one of many useful guides to legislative intent. This observation might be useful if the language of the statute offered the kind of ambiguity that suggested the need to probe more deeply into legislative intent. It does not. Even if it did, on the same pages of *Garfield*, the Court concludes that a chapter heading, alone, can be “too slender a reed” to support a finding of legislative intent. In the present situation, many provisions within the chapter expressly refer to railroad corporations. Section 7537 is not one of them. It is inconsistent with accepted statutory interpretation to presume that the Legislature performed an idle act when it maintained this distinction.

The Transit District also points to a case involving the Commission’s reach under Sections 1201 and 1202, through which the Sixth District Court of Appeals found the Commission not to have exclusive jurisdiction related to street

crossing of a specific transit district.¹ The Court of Appeals expressly limited its decision to interpretation of jurisdiction pursuant to Section 1201 and 1202.

Those sections do not apply to the present complaint. At issue here, is not the nature of a public crossing, but the right of a private landowner to maintain a private crossing.

Since the Transit District did not offer a persuasive argument for the lack of jurisdiction over this matter, we will proceed with full consideration of the complaint. I will not entertain nor recommend to the Commission an interlocutory appeal of this ruling. I will address the issue of jurisdiction in the final decision in this complaint and any appeal, if necessary, can be lodged in response to that decision after exhausting administrative remedies.

Because of my statutory obligation to conclude this matter within one year, it is necessary that we proceed quickly. The parties have asked for, and received, the names of potential mediators to help them resolve this dispute. In the meantime, we must proceed with a schedule for the completion of the formal proceeding. I have asked the parties to suggest a schedule, but have heard

¹ *Santa Clara Transit Authority v. Public Utilities Commission*, (2004, 6th Dist), 124 CalApp 4th 346.

nothing in response. If I do not hear from the parties within one week of this ruling, I will set the schedule without their input.

IT IS SO RULED.

Dated February 24, 2006, at San Francisco, California.

/s/ STEVEN WEISSMAN

Steven Weissman
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling on the Issue of Commission Jurisdiction all parties of record in this proceeding or their attorneys of record.

Dated February 24, 2006, at San Francisco, California.

/s/ TERESITA C. GALLARDO

Teresita C. Gallardo

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.